

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

Docket No. 16-cr-10115-DPW

v.

JAMES W. MASSARO,

Defendant

ORDER

CABELL, U.S.M.J.:

The defendant has been charged with resisting a Deputy United States Marshal and in the process inflicting bodily injury, in violation of 18 U.S.C. § 111(a) and (b). (Dkt. No. 1). The incident giving rise to the charge took place during a revocation hearing in a courtroom in this Courthouse. Some or all of the events taking place before, during and after the alleged criminal conduct were video and audio recorded through the use of equipment controlled by the Marshals Service. Apparently, though, a decision was made at some point to discard some of the recordings. Accordingly, the government in discovery subsequently produced recordings which in the aggregate depict some, but not all, of the relevant events.

The defendant has among other things moved to compel documents relating to the Marshals Service's policy regarding the preservation and maintenance of recordings. The government contends that the defendant is not entitled to such discovery and has declined to produce the requested material. Asked to more fully explain its reasoning, particularly where the defendant had asked that all recordings be preserved, the government asserts that the Marshals Service has "significant security concerns regarding the disclosure of any information regarding the security

system in the Courthouse.” (Dkt. No. 70). The government does not explain what those concerns are, but indicated it would provide any retention policy or policies for the Court for an *in camera* review if so requested. In the Court’s view, it is not self-evident how disclosure of a general retention policy would trigger a serious security concern, and an *in camera* review of the policy is therefore necessary and appropriate.

Accordingly, the government is hereby ORDERED by the close of business on Wednesday, December 14, 2016, to submit to the Court for its *in camera* review a copy of the Marshals Service’s “retention policy or policies” regarding recordings. The Court would also welcome in accompaniment a submission providing a more fulsome statement regarding the potential security risks posed by the disclosure of any such retention policy or policies.

SO ORDERED.



DONALD L. CABELL
United States Magistrate Judge

DATED: December 9, 2016